

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Richard Allen Smuda,

Plaintiff,

-vs-

Leann Bertsch, Director, North Dakota
Department of Corrections and
Rehabilitation, in her official capacity,
et al.,

Defendants.

Case No. 3:16-cv-335

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Pursuant to 28 U.S.C. § 636, the court has received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge.¹ The Report and Recommendation recommends that the defendants' motion for judgment on the pleadings be granted; that the plaintiff's motion to strike be found moot; and that the plaintiff's complaint be dismissed without prejudice. The plaintiff filed an objection to the Report and Recommendation, asserting that he does not understand why his individual capacity claims have been dismissed and why his official capacity claims are now being dismissed.²

The court finds the recommendations in the magistrate judge's Report and Recommendation are appropriate and consistent with the law and precedent. In short, the relief the plaintiff seeks regarding the circumstances surrounding the state court decision ordering his civil commitment and his request for release from commitment cannot be considered in this action. He must file a habeas corpus action. With regard to the plaintiff's request for monetary damages, all the defendants are state employees and the state is

¹ Doc. #82.

² Doc. #85.

immune from suit for monetary damages absent a waiver of its sovereign immunity. The State of North Dakota has not waived its Eleventh Amendment immunity.

For the reasons set forth in the magistrate judge's Report and Recommendation, the defendants' motion for judgment on the pleadings³ is **GRANTED**; the plaintiff's motion to strike⁴ is rendered **MOOT** by the court's decision; and the plaintiff's complaint is dismissed without prejudice.

IT IS SO ORDERED.

Dated this 20th day of September, 2017.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court

³ Doc. #69.

⁴ Doc. #73.